

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Denise Barbut, et al.

Serial No.: 10/619,760

Filed: July 14, 2003

For: AORTIC OCCLUDER WITH ASSOCIATED
FILTER AND METHODS OF USE DURING
SURGERY

Examiner: Laura Bouchelle

Group Art Unit: 3763

Confirmation No.: 7383

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION

In response to the Office Action of February 28, 2007, please amend the above-identified application for patent as follows:

Remarks/Arguments begin on page 2 of this paper.

REMARKS


The remarks below are in response to an Office Action mailed on February 28, 2007 in the above-listed patent application. In the Office Action, pending Claims 3-18 were rejected under nonstatutory obviousness-type double-patenting over U.S. Patent No. 6,592,546. Although the applicant's attorney does not believe that the method claims are "identical" as alleged in the Office Action, to expedite allowance a Terminal Disclaimer has been filed herewith. The rejections of Claims 3-18 over the U.S. Patent No. 6,592,546 have therefore been overcome and Claims 3-18 are in a condition for allowance.

CONCLUSION

In view of the remarks presented above, it is respectfully submitted that the pending claims of the present invention are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

If an appropriate payment does not accompany or precede this submission, the Commissioner is hereby authorized to charge any required fees, such as under 37 C.F.R. §§ 1.16 or 1.17, including any petition for extension of time, or to credit any overpayment, to Deposit Account No. 50-1225 (RMI-5708CIPCON5).

May 29, 2007



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**Terminal Disclaimer To Obviate A Double
Patenting Rejection Over A Prior Patent**

Docket No.
RMI-5708CIPCONS

In Re Application Of: Barbut, et al.

| Application No. | Filing Date | Examiner | Customer No. | Group Art Unit | Confirmation No. |
|-----------------|-------------|---------------------|--------------|----------------|------------------|
| 10/619,760 | 7/14/03 | Bouchelle, Laura A. | 30452 | 3763 | 7383 |

Invention:

AORTIC OCCLUDER WITH ASSOCIATED FILTER AND METHODS OF USE DURING A CARDIAC SURGERY

Owner of Record:

COMMISSIONER FOR PATENTS:

The above-identified owner of record of a 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,592,546. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors and/or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. 1.321, has all claims cancelled by a reexamination certificate, is issued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney of record.

Dated: March 27, 2007


Signature

Gregory J. Carlin

Typed or Printed Name

- ☒ Terminal disclaimer fee under 37 C.F.R. 1.20(d) included.
☒ PTO suggested wording for terminal disclaimer was unchanged.
☐ Certification under 37 C.F.R. 3.73(b) is required if terminal disclaimer is signed by the assignee.